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10 Attorneys for Defendants/Counterclaimant
11 WIND PUMP POWER, LLC,
12 SUNFLOWER WIND, LLC, and
13 DAN RASURE

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA CONTROLS, LLC, a Nevada
Limited Liability Company,

Plaintiff,

v.

WIND PUMP POWER, LLC, a Kansas
Limited Liability Company,
SUNFLOWER WIND, LLC, a Kansas
Limited Liability Company; DAN
RASURE, an individual,

Defendants.

WIND PUMP POWER, LLC, a Kansas
Limited Liability Company,

Counterclaimant,

v.

NEVADA CONTROLS, LLC, a Nevada
Limited Liability Company,

Counterdefendant.

Case No. 3:12-cv-00068

DEFENDANTS' ANSWER TO
COMPLAINT AND COUNTERCLAIM

1 Defendants, WIND PUMP POWER, LLC, SUNFLOWER WIND, LLC and DAN
2 RASURE, by and through their counsel of record, Parsons Behle & Latimer, hereby admit, deny
3 and allege as follows in response to Plaintiff's Complaint on file herein:

4 **JURISDICTION**

5 1. Answering Paragraph 1 of Plaintiff's Complaint, Defendants admit the allegations
6 contained therein.

7 **PARTIES AND VENUE**

8 **PARTIES**

9 2. Answering Paragraph 2 of Plaintiff's Complaint, Defendants are without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained
11 therein.

12 3. Answering Paragraph 3 of Plaintiff's Complaint, Defendants admit the allegations
13 contained therein.

14 4. Answering Paragraph 4 of Plaintiff's Complaint, Defendants admit that Defendant
15 Sunflower Wind, LLC is, and at all relevant times herein was, a limited liability company formed
16 in Kansas, but deny the remaining allegations contained therein.

17 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendants admit the allegations
18 contained therein.

19 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendants are without
20 knowledge or information sufficient to form a belief as to the truth of the allegations contained
21 therein.

22 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendants deny the allegations
23 contained therein.

24 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendants deny the allegations
25 contained therein.

26 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendants deny the allegations
27 contained therein.

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BACKGROUND FACTS

10. Answering Paragraph 10 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

11. Answering Paragraph 11 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

12. Answering Paragraph 12 of Plaintiff's Complaint, Defendants admit that in June 2011, Nevada Controls had a telephonic meeting with Dan Rasure to discuss the potential purchase and installation of ten wind turbines for the Austin project and rated power specifications, but deny the remaining allegations contained therein.

13. Answering Paragraph 13 of Plaintiff's Complaint, Defendants admit that WPP signed a "Mutual Non-Disclosure Agreement and Confidentiality Agreement" to protect WPP's intellectual property and access to Nevada Controls' customers. The "Mutual Non-Disclosure Agreement and Confidentiality Agreement" speaks for itself. Defendants deny the remaining allegations of paragraph 13.

14. Answering Paragraph 14 of Plaintiff's complaint, Defendants admit that Dan Rasure traveled to Carson City, Nevada to meet with Nevada Controls, and that during that meeting they discussed the Austin Project, certification of WPP's "WPP-100" hydraulic wind turbine, and submission of the certification paperwork, but deny the remaining allegations contained therein.

15. Answering Paragraph 15 of Plaintiff's Complaint, Defendants admit that the Wind Turbine Purchase Agreement was executed on the 11th and 17th of October 2011. Defendants deny the remaining allegations of paragraph 15.

16. Answering Paragraph 16 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

17. Answering Paragraph 17 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

18. Answering Paragraph 18 of Plaintiff's Complaint, Defendants admit that WPP did not install the foundations, but deny the remaining allegations contained therein.

1 19. Answering Paragraph 19 of Plaintiff's complaint, Defendants admit that Nevada
2 Controls made a partial payment of \$84,000 to WPP for the purchase and installation of seven
3 helical screw foundations, but Defendants are without sufficient information to form a belief as to
4 the truth of the remaining allegations in paragraph 19, and therefore deny the same.

5 20. Answering Paragraph 20 of Plaintiff's complaint, Defendants admit that in
6 November of 2011, Mr. Rasure and Nevada Controls discussed the need for additional funds to
7 purchase blades for the wind turbines and to coat the blades and that Addendum 1 to Wind
8 Turbine Purchase Agreement ("Addendum") was signed on December 7, 2011. The Addendum
9 speaks for itself. Defendants deny the remaining allegations of paragraph 20.

10 21. Answering Paragraph 21 of Plaintiff's Complaint, Defendants admit the
11 allegations contained therein.

12 22. Answering Paragraph 22 of Plaintiff's Complaint, Defendants admit that Mr.
13 Rasure told Nevada Controls via email that he was picking up the blades in Birds Landing,
14 California on December 13, 2011. Defendants further admit that as of the date of the Complaint,
15 no blades have ever been delivered to Nevada Controls. Defendants deny the remaining
16 allegations contained therein.

17 23. Answering Paragraph 23 of Plaintiff's Complaint, Defendants deny the allegations
18 contained therein.

19 24. Answering Paragraph 24 of Plaintiff's Complaint, Defendants admit the
20 allegations contained therein.

21 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendants admit that they have
22 not paid Nevada Controls the sums described in paragraph 25. The Addendum speaks for itself.
23 Defendants deny the remaining allegations of paragraph 25.

24 26. Answering Paragraph 26 of Plaintiff's Complaint, Defendants admit that "no
25 certification paperwork has been submitted." The Addendum speaks for itself. Defendants deny
26 the remaining allegations of paragraph 26.

FIRST CAUSE OF ACTION

(Breach of Contract – Damages)

(Against WPP)

27. Answering Paragraph 27 of Plaintiff's Complaint, Defendants repeat and reallege their answers set forth above to Paragraph 1 through 26 as though fully set forth herein.

28. Answering Paragraph 28 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

29. Answering Paragraph 29 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

30. Answering Paragraph 30 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

31. Answering Paragraph 31 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

32. Answering Paragraph 32 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

33. Answering Paragraph 33 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

34. Answering Paragraph 34 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

(Against WPP)

35. Answering Paragraph 35 of Plaintiff's Complaint, repeat and reallege their answers set forth above to Paragraph 1 through 34 as though fully set forth herein.

36. Answering Paragraph 36 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

37. Answering Paragraph 37 of Plaintiff's Complaint, Defendants deny the allegations

1 contained therein.

2 38. Answering Paragraph 38 of Plaintiff's Complaint, Defendants deny the allegations
3 contained therein.

4 39. Answering Paragraph 39 of Plaintiff's Complaint, Defendants deny the allegations
5 contained therein.

6 **THIRD CAUSE OF ACTION**

7 **(Declaratory Relief – Alter Ego)**

8 **(Defendant Dan Rasure)**

9 40. Answering Paragraph 40 of Plaintiff's Complaint, repeat and reallege their
10 answers set forth above to Paragraph 1 through 39 as though fully set forth herein.

11 41. Answering Paragraph 41 of Plaintiff's Complaint, Defendants deny the allegations
12 contained therein.

13 42. Answering Paragraph 42 of Plaintiff's Complaint, Defendants deny the allegations
14 contained therein.

15 43. Answering Paragraph 43 of Plaintiff's Complaint, Defendants deny the allegations
16 contained therein.

17 44. Answering Paragraph 44 of Plaintiff's Complaint, Defendants admit that Dan
18 Rasure has total control over WPP and is the sole member of the LLC, but deny the remaining
19 allegations contained therein.

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21 45. Answering Paragraph 45 of Plaintiff's Complaint, Defendants admit that Mr.
22 Rasure represented that he would bring a crew with him from Kansas to assist him in installing
23 the helical foundations, but deny the remaining allegations contained therein.

24 46. Answering Paragraph 46 of Plaintiff's Complaint, Defendants deny the allegations
25 contained therein.

26 47. Answering Paragraph 47 of Plaintiff's Complaint, Defendants deny the allegations
27 contained therein.

28 48. Answering Paragraph 48 of Plaintiff's Complaint, Defendants deny the allegations

1 contained therein.

2 **FOURTH CAUSE OF ACTION**

3 **(Declaratory Relief – Alter Ego)**

4 **(Defendant Sunflower Wind, LLC)**

5 49. Answering Paragraph 49 of Plaintiff's Complaint, repeat and reallege their
6 answers set forth above to Paragraph 1 through 48 as though fully set forth herein.

7 50. Answering Paragraph 50 of Plaintiff's Complaint, Defendants deny the allegations
8 contained therein.

9 51. Answering Paragraph 51 of Plaintiff's Complaint, Defendants deny the allegations
10 contained therein.

11 52. Answering Paragraph 52 of Plaintiff's Complaint, the written material referenced
12 in paragraph 52, which has not been sufficiently identified at this time, speaks for itself. Except
13 as admitted, Defendants deny the allegations of paragraph 52.

14 53. Answering Paragraph 53 of Plaintiff's Complaint, Defendants deny the allegations
15 contained therein.

16 54. Answering Paragraph 54 of Plaintiff's Complaint, Defendants admit the allegation
17 contained therein.

18 55. Answering Paragraph 55 of Plaintiff's Complaint, Defendants deny the allegations
19 contained therein.

20 56. Answering Paragraph 56 of Plaintiff's Complaint, Defendants deny the allegations
21 contained therein.

22 57. Answering Paragraph 57 of Plaintiff's Complaint, Defendants deny the allegations
23 contained therein.

24 **FIFTH CAUSE OF ACTION**

25 **(Unjust Enrichment)**

26 **(All Defendants)**

27 58. Answering Paragraph 58 of Plaintiff's Complaint, Defendants repeat and reallege
28 their answers set forth above to Paragraphs 1 through 57 as though fully set forth herein.

1 59. Answering Paragraph 59 of Plaintiff's Complaint, Defendants deny the allegations
2 contained therein.

3 60. Answering Paragraph 60 of Plaintiff's Complaint, Defendants deny the allegations
4 contained therein.

5 61. Answering Paragraph 61 of Plaintiff's Complaint, Defendants deny the allegations
6 contained therein.

7 **SIXTH CAUSE OF ACTION**

8 **(Fraud)**

9 **(All Defendants)**

10 62. Answering Paragraph 62 of Plaintiff's Complaint, Defendants repeat and reallege
11 their answers set forth above to Paragraphs 1 through 61 as though fully set forth herein.

12 63. Answering Paragraph 63 of Plaintiff's Complaint, Defendants deny the allegations
13 contained therein.

14 64. Answering Paragraph 64 of Plaintiff's Complaint, Defendants are unable to
15 identify the document described therein and therefore deny the allegations contained therein.

16 65. Answering Paragraph 65 of Plaintiff's Complaint, Defendants deny the allegations
17 contained therein.

18 66. Answering Paragraph 66 of Plaintiff's Complaint, Defendants deny the allegations
19 contained therein.

20 67. Answering Paragraph 67 of Plaintiff's Complaint, Defendants deny the allegations
21 contained therein.

22 68. Answering Paragraph 68 of Plaintiff's Complaint, Defendants admit that data
23 regarding the WPP-100's was forwarded to Mr. Jesse, but are without knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations contained therein..

25 69. Answering Paragraph 69 of Plaintiff's Complaint, Defendants admit that an e-mail
26 was sent from Mr. Jesse on December 13, 2011, and that Mr. Rasure never responded to the e-
27 mail. The e-mail speaks for itself. Defendants deny the remaining allegations of paragraph 69.

28 70. Answering Paragraph 70 of Plaintiff's Complaint, Defendants deny the allegations

1 contained therein.

2 71. Answering Paragraph 71 of Plaintiff's Complaint, Defendants deny the allegations
3 contained therein.

4 72. Answering Paragraph 72 of Plaintiff's Complaint, Defendants deny the allegations
5 contained therein.

6 **AFFIRMATIVE DEFENSES**

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8 **FIRST AFFIRMATIVE DEFENSE**

9 The Plaintiff has failed to state claims upon which relief may be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 Plaintiff is barred from recovery against Defendants because it failed to satisfy a
12 condition, or conditions, precedent to one or more of the agreements at issue.

13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiff's alleged damages, if any there be any, were proximately caused by or
15 contributed to by the negligent, reckless and/or unlawful conduct of the Plaintiff and/or third
16 parties over which Defendants have no control.

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18 **FOURTH AFFIRMATIVE DEFENSE**

19 The damages, if any, incurred by Plaintiffs are not attributable to any act or omission on
20 the part of the Defendants.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Upon information and belief, Plaintiff has failed and/or neglected to mitigate its alleged
23 damages, if any.

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25 **SIXTH AFFIRMATIVE DEFENSE**

26 Plaintiff has failed to join one or more indispensable parties.
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SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by laches, waiver and estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of express or implied release or waiver.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are either barred or subject to offset due to the doctrine of equitable recoupment, and/or unjust enrichment.

TENTH AFFIRMATIVE DEFENSE

The agreements at issue are indefinite because essential elements were omitted.

ELEVENTH AFFIRMATIVE DEFENSE

The Defendant's breach, or anticipatory breach, of the agreement constitutes a repudiation of the agreement.

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to plead the essential elements of a claim for fraud with the requisite level of particularity.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are either barred or subject to offset due to a unilateral material mistake of fact on the part of the Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

This Defendant reserves the right to amend its Answer or allege additional affirmative defenses and claims as additional facts become known.

1 WHEREFORE, Defendants pray as follows:

2 1. That Plaintiff takes nothing by way of its Complaint;

3 2. For reasonable attorney's fees and costs of suit incurred herein, and interest
4 thereon allowed by law; and

5 3. For such other and further relief as the Court may deem just and proper.

6
7 **COUNTERCLAIM**

8 WIND PUMP POWER, LLC ("WPP"), by and through its counsel of record, Parsons
9 Behle & Latimer, hereby counterclaims against Plaintiff/Counterdefendant NEVADA
10 CONTROLS, LLC ("Nevada Controls") as follows:

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12 **GENERAL ALLEGATIONS**

13 1. WPP and Nevada Controls entered into a Mutual Non-Disclosure and
14 Confidentiality Agreement ("the Confidentiality Agreement"), a true and correct copy of which,
15 executed by Nevada Controls on June 23, 2011, is attached hereto as Exhibit 1.

16 2. The Confidentiality Agreement provided that:

17 Confidential Information means any information disclosed
18 to either Party, either directly or indirectly in writing, orally or by
19 inspection of tangible objects, including without limitation: (a)
20 trade secrets, inventions, operating techniques, know-how, design
21 details and specifications; (b) information regarding research,
22 development, new service offerings and products, marketing and
23 selling plans; (c) business plans, financial information, financial
24 forecasts, financial models, budgets, financial statements; (d)
25 licensing and distribution arrangements, prices and costs for
26 materials and equipment, and suppliers and customers; and (e) the
27 existence of any business discussions, negotiations or agreements
28 between the Parties. "Confidential Information" disclosed orally by
one Party to the other Party shall be reduced to writing and
conspicuously identified as "Confidential" and sent to the other
Party within thirty (30) days of the date of disclosure.

3. The design details for the construction of "mono_towers" for use with WPP's 10-
100kw Unit Wind Turbines, and the name of the supplier that produced and planned to sell 10 of
the mono_towers to WPP constituted confidential information under the Confidentiality
Agreement.

1 12. WPP has been required to consult with and retain legal counsel to prosecute this
2 Counterclaim and has incurred fees and costs to protect its rights. WPP is entitled to recover
3 attorney's fees and costs against Nevada Controls as allowed by the Confidentiality Agreement
4 and by law, as well as interest on all damages and costs.

5 **SECOND COUNTERCLAIM**

6 **(Unjust Enrichment)**

7 13. WPP re-alleges and incorporate by reference paragraphs 1 through 12 of the
8 Counterclaim above.

9 14. Nevada Controls has reaped benefits in the form of obtaining confidential
10 information from WPP that it used to purchase and install, at a significant discount, mono_towers
11 from a supplier of WPP at the site described as the "Austin Project" in paragraph 12 of the
12 Complaint. In obtaining these benefits and the significant discounts associated therewith, Nevada
13 Controls has injured WPP by causing it substantial monetary losses, all of which were foreseeable
14 and the intended consequences of these actions.

15 15. Based on these facts, in equity and good conscience, it would be unconscionable
16 and otherwise unjust for Nevada Controls to enrich itself at the expense of WPP.

17 16. As a direct and proximate result of Nevada Control's actions, WPP has suffered
18 damages in excess of \$75,000.00.

19 17. WPP has been required to consult with and retain legal counsel to prosecute this
20 Counterclaim and has incurred fees and costs to protect its rights. WPP is entitled to recover
21 attorney's fees and costs against Nevada Controls as allowed by law, as well as interest on all
22 damages and costs.

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1 WHEREFORE, WPP requests that the Court enter judgment in its favor with:

- 2 1) A judicial determination that Nevada Controls breached the Confidentiality Agreement;
- 3 2) A judgment in favor of WPP in an amount in excess of \$75,000;
- 4 3) An award of WPP's costs and attorneys' fees; and
- 5 4) Awarding WPP such additional equitable and other relief as shall be found to be
- 6 appropriate under the circumstances.
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8 DATED this 23rd day of March, 2012.

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10 PARSONS BEHLE & LATIMER

11 By: 

12 Michael R. Kealy, Bar No. 971

13 Robert W. DeLong, Bar No. 10022

14 Attorneys for Defendants/Counterclaimant

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